

EXHIBIT K



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September 29, 2010

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BY E-MAIL AND FEDERAL EXPRESS

Laura Beth Miller, Esq.
Brinks Hofer
NBC Tower, Suite 3600
455 N. Cityfront Plaza Drive
Chicago, IL 60611-5599

Re: *Progressive Casualty Insurance, Co v. Safeco Insurance Co. of Illinois, et al.*, Civ. A. No.
1:10-cv-01370-PAG

Dear Laura Beth:

During the September 28, 2010 case management conference, Plaintiff represented to Judge Gaughan that it would oppose a motion to stay the litigation pending reexamination because of the lengthy nature of reexamination proceedings. For your information, we attach a copy of the August 5, 2010 Federal Register Notice relating to the Pilot Program for Waiver of Patent Owner's Statement in Ex Parte Reexamination Proceedings. The Pilot Program provides patent owners with the opportunity to reduce the pendency of reexamination proceedings. Specifically, the "patent owner[]" may waive the right to file a patent owner's statement in response to a request from the USPTO," which will "reduce the pendency of the proceeding by about three to five months." Indeed, participation in this program "will eliminate the delay of waiting for a patent owner's statement and the third-party requester's reply and will permit the examiner to utilize his or her time more efficiently by drafting the order and the first Office action on the merits (including an NIRC) together."

Very truly yours,

A handwritten signature in black ink, appearing to read "NMJ", with a long horizontal flourish extending to the right.

Nicole M. Jantzi

NMJ:nmj
Enclosure

ROPES & GRAY LLP

Laura Beth Miller, Esq.

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September 29, 2010

cc: James Wooley, Esq.
Calvin P. Griffith, Esq.
James R. Myers, Esq.
Joshua V. Van Hoven, Esq.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT
7/17/2010 THROUGH 7/29/2010

Firm	Address	Date accepted for filing	Products
Imperia Corp	343 Manley Street, West MA 02379.	7/27/2010	Imperial Corp. manufactures custom, cabinetry out of melamine and plywood.
W.H. Bagshaw Company, Inc. ..	1 Pine Street Ext., Nashua NH 03060.	7/27/2010	WH Bagshaw manufacturers pins, pin assemblies and wire products for a wide range of industrial applications.
Cinram Manufacturing, LLC	1400 E. Lackawanna Street, Olyphant PA 18448.	7/28/2010	Cinram is one of the largest optical disc replicators in the world.
Fixture Hardware Manufacturing Corporation.	4116 First Avenue, Brooklyn NY 11232.	7/28/2010	Firm manufactures a full line of steel display hardware.
McTeigue & McClelland, Inc.	597 Main Street, Great MA 01230.	7/28/2010	MC2 designs and manufactures, hand made, precious jewelry using gold, platinum, diamonds and precious stones.
MSW, Inc	7159 Country Road 200, Joplin MO 64801.	7/28/2010	MSW, Inc., designs and manufactures booths, counters, and table tops made of plastics, woods, and laminate materials.
Philip Machine Company, Inc. ...	184 Woonasquatucket Ave, North RI 02911.	7/28/2010	Philip Machine Company, Inc. manufactures metal findings using steel, brass, and stainless steel.
Fulford Manufacturing Company, Inc.	65 Tripps Lane, East RI 02915	7/29/2010	Fulford Manufacturing Company, Inc. manufactures hardware, plumbing fixtures and fittings, metal stampings, and costume jewelry using materials that include stainless steel, brass and aluminum.
Gulf Crown Seafood Company, Inc.	306 Jon Floyd Rd, Delcambre LA 70528.	7/29/2010	Processes shrimp for human consumption.
Hatch & Kirk, Inc	5111 Leary Ave NW, Seattle WA 98107.	7/29/2010	Hatch & Kirk, Inc., is a supplier of heavy duty diesel engine parts.
Parlec, Inc	101 Perinton Parkway, Delcambre LA 70528.	7/29/2010	Parlec, Inc., manufactures machine tool accessories.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room D100, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 30, 2010.

Miriam J. Kearse,
Eligibility Certifier.

[FR Doc. 2010-19209 Filed 8-4-10; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2010-0056]

Pilot Program for Waiver of Patent Owner's Statement in Ex Parte Reexamination Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) recognizes the need to reduce the pendency of reexamination proceedings and improve the efficiency of the reexamination process. The USPTO is considering a number of short and long-range initiatives that can be implemented in three phases. In phase I, the USPTO will implement streamlined procedures, as well as optional programs in which patent owners and third party requesters may elect to participate in order to gain the benefit of shorter pendency. In phases II and III, the USPTO will consider the data gathered from phase I and the feedback from the patent owners and other stakeholders, and implement process changes that are likely to improve efficiency. Such changes may include internal procedural changes, rule making that includes opportunities for the public to comment, and/or administrative proposals for statutory changes to enhance the efficiency of the USPTO in conducting reexamination proceedings. As part of phase I to reduce pendency and improve efficiency in *ex parte* reexamination proceedings, the USPTO is implementing, in this notice, a pilot program in which patent owners may waive the right to file a patent owner's statement upon a request made by the USPTO. This will enable USPTO in suitable cases to issue the first Office

action on the merits together with or soon after the reexamination order, and thereby reduce the pendency of the proceeding by about three to five months.

DATES: *Effective Date:* The changes set forth in this notice will take effect on August 5, 2010.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, Kenneth M. Schor or Joni Y. Chang, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at 571-272-7735, 571-272-7710 or 571-272-7720, or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Inquiries regarding the current reexamination practice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272-7703, or by electronic mail at PatentPractice@uspto.gov.

SUPPLEMENTARY INFORMATION:

1. Background: The USPTO recognizes the need to reduce the pendency of reexamination proceedings and improve the efficiency of the reexamination process. As of March 31, 2010, the average time to reach notice of intent to issue reexamination certificate (NIRC) for *ex parte* reexamination proceedings was about twenty-five months. Many of our stakeholders have expressed the desire to have a proceeding in which patent owners can resolve patent

validity issues in a shorter time frame. The USPTO is considering a number of short and long-range initiatives that can be implemented in three phases to reduce pendency and improve efficiency in reexamination proceedings. In phase I, the USPTO will implement streamlined procedures and optional programs in which patent owners and third party requesters may elect to participate in order to gain the benefit of shorter pendency. For example, the USPTO recently implemented the streamlined procedure for appeal brief review in *ex parte* reexamination proceedings. See *Streamlined Procedure for Appeal Brief Review in Ex Parte Reexamination Proceedings*, 75 FR 29321 (May 25, 2010). In the instant notice, the USPTO is implementing a pilot program in which patent owners may waive the right to file a patent owner's statement in response to a request from the USPTO. The USPTO will also publish notices to implement additional optional procedures and seek public comments on other procedural changes in the near future. In phases II and III, the USPTO will consider the data gathered from phase I and the feedback from the patent owners and other stakeholders, and implement process changes through internal procedural changes, rule making that includes opportunities for the public to comment, and/or administrative proposals for statutory changes to enhance reexamination proceedings. The USPTO welcomes feedback on improving its processes. Suggestions may be directed to the Office of Patent Legal Administration at (571) 272-7701 for the general examination process, or (571) 272-7703 for the reexamination or reissue process.

II. Overview of the Pilot Program: As part of phase I to reduce pendency and improve efficiency in *ex parte* reexamination proceedings, the USPTO will implement a pilot program in which the USPTO will contact the patent owner and request the optional waiver of the right to file a patent owner's statement after the proceeding has been granted a filing date and before the examiner begins his or her review. This will enable the USPTO in suitable cases to issue the first Office action on the merits (including an NIRC) together with or soon after the order for reexamination, and thereby reduce the pendency of the proceeding by about three to five months.

Under the current procedure, a patent owner may file a statement under 35 U.S.C. 304 within two months from the issuance of an *ex parte* reexamination order in a reexamination proceeding,

and a third party requester may file a reply (under 35 U.S.C. 304) to the patent owner's statement within two months from the date of service of the patent owner's statement. Last year, approximately ten percent of patent owners filed a patent owner's statement under 35 U.S.C. 304 after the USPTO had ordered an *ex parte* reexamination of a patent. When *ex parte* reexamination is ordered, the examiner generally starts to prepare the first Office action on the merits after the receipt of the patent owner's statement and the third party requester's reply, or after the expiration of the time period for filing the statement and reply. As of March 31, 2010, the average time to order an *ex parte* reexamination from the filing of an *ex parte* reexamination request was about two months and the average time to issue a first Office action on the merits from the filing of an *ex parte* reexamination request was between seven to eight months.

If the patent owner waives the right to file a patent owner's statement in response to a request from the USPTO, the examiner will be able to act on the first Office action on the merits immediately after determining that reexamination will be ordered, and in a suitable case issue the reexamination order and the first Office action on the merits (including an NIRC) at the same time. This will eliminate the delay of waiting for a patent owner's statement and the third-party requester's reply and will permit the examiner to utilize his or her time more efficiently by drafting the order and the first Office action on the merits (including an NIRC) together. Moreover, by performing the threshold analysis of determining and preparing an action on the merits concurrently when a request raises a substantial new question of patentability (SNQ), the overall efficiency of the USPTO in performing the reexamination process should be increased. The Central Reexamination Unit (CRU) has experience in performing the threshold SNQ analysis and concurrently preparing an Office action on the merits, and the reexamination order and Office action are typically mailed together in *inter partes* reexamination proceedings. See 37 CFR 1.935.

III. Waiver Procedure under the Pilot Program: Under the pilot program for waiving the patent owner's statement announced in this notice, the CRU will contact, via telephone, the patent owner to request the optional waiver of the patent owner's statement after the proceeding has been granted a filing date and before the examiner begins his or her review. The telephone communication will be limited to the

CRU requesting the waiver of the patent owner's statement and agreement (or non-agreement) to the waiver by the patent owner. Discussion of the merits of the proceedings, e.g., the patentability of claims in patents, will not be permitted. The CRU will make the agreement or non-agreement of record in the reexamination file in an interview summary and a copy will be mailed to the patent owner and any third party requester. The patent owner is not required to complete a written statement of the telephone communication under 37 CFR 1.560(b) or otherwise, and such a statement should not be filed as it will slow the process. If the patent owner agrees to the waiver of the right to file a patent owner's statement, the examiner will typically issue the reexamination order and the first Office action on the merits on the same day as the order, or within a few days thereafter.

The Office intends to make available to the public statistics on the number of patent owners that agree to waive the statement and the impact on pendency due to waiving the statement right. This data is expected to form a portion of the data used in the decision making processes in phases II and III.

Dated: July 16, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010-19337 Filed 8-4-10; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-855)

Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty order, covering the period of review ("POR") of June 1, 2009, through January 20, 2010. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.